IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.509 OF 2006
WITH
CIVIL APPLICATION NO.641 OF 2006

Ramsunder Ratiram Verma. ..Appellant.

V/s.

Municipal Corporation of Gr.Bombay. ..Respondent.

Mr.Anil Singh for B.A.Singh for appellant.

Mrs. Geeta Joglekar for BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 17, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mrs. Joglekar waives notice for the Corporation.

4. As short question is involved, appeal from order is taken up for final disposal forthwith by consent.

5. This appeal from order takes exception to the Order passed by the trial Court refusing to grant

ad-interim relief in favour of the appellant/plaintiff during the pendency of the Notice of Motion dated July 11, 2006. The reason recorded by the Court below is that the document relied upon by the plaintiff does not pertain to the suit structure. The suit structure is not assessed to the Municipal taxes as per the record of the Corporation and lastly that the addresses mentioned in the documents relied upon by the plaintiff does not tally with the addresses mentioned in the suit notice.

. In my opinion, prima facie view recorded by the trial Court for the purpose of considering ad-interim relief cannot be sustained. This is so because the assessment receipts produced by the appellant/plaintiff at pages 39 to 44 describe the suit structure as No.T-3316(57) 206(57), Khindipada Tiled Shed, Darga Road. Besides, the appellant relied on communication sent to the Deputy Collector dated 23rd August, 1990 which gives description of the structure No.T.X.39-4/5, Khindipada, Amar Nagar, Darga Road, Mulund (W), Bombay-400 080. Similar description is given in the letter received by the appellant from the office of the Deputy Collector dated 20th August, 1990. The description of the suit property given in paragraph-1 of the plaint mentions

that shop-cum-residential premises admeasuring about 1022 sq.ft.(consist of 3 units each adm. 10’ x 34’ carpet) made of B.M.Wall with A.C.Sheet roof situated at Amarnagar, Khindipada, Dargah Road, Mulund (W), Mumbai-82. Indeed, in the receipts produced it is described as tiled shed roof. That would only mean that the roof has been changed from Tiled shed to A.C.Sheet roof. The fact that the structure is situated at Khindipada, Darga Road is consistently mentioned in the plaint as well as documents pressed into service. In paragraph-4 of the plaint, it is clearly asserted that the father of the plaintiff did not have any other premises in the said area at that relevant time other than the suit premises. For the purpose of consideration of interim relief, this case made out by the plaintiff was sufficient. Indeed, in the suit notice description of the property is given as near Shivmandir, Dargah Road, Amar Nagar, Mulund (W), Mumbai-82. In the present case, the documents pressed into service and the case made out by the plaintiff will have to be accepted as it is for the present. In the circumstances, the basis on which the lower Court proceeded to refuse ad-interim relief cannot be sustained. Instead the impugned order is set aside and ad-interim relief, as prayed by the plaintiff is granted to continue till the disposal of

the Notice of Motion or till such further order as passed by the Trial court, as may be warranted.

6. The appeal from order allowed on the above terms. No order as to costs.

7. Hearing of the Notice of Motion is expedited, to be finally disposed of preferably by end of 20th October, 2006. This direction is made on the basis of assurance given by the counsel appearing for the parties that the pleadings will be completed on or before 7th August, 2006.

8. Civil Application disposed of accordingly.